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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,725	08/31/2001	Roger Dale Hiatt	24221-88-2	1704
21130	7590	01/30/2003		
BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP ATTN: IP DEPARTMENT DOCKET CLERK 2300 BP TOWER 200 PUBLIC SQUARE CLEVELAND, OH 44114			EXAMINER	
			NOLAND, THOMAS	
		ART UNIT	PAPER NUMBER	
		2856		

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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44-725
SERIAL NUMBER FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. 87C

EXAMINER

ART UNIT PAPER NUMBER
9

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined. Responsive to communication filed on 8/31/01 This action is made final.

A shortened statutory period for response to this action is set to expire 1 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II SUMMARY OF ACTION

1. Claims 1-22 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. Claims _____ have been cancelled.
3. Claims _____ are allowed.
4. Claims _____ are rejected.
5. Claims _____ are objected to.
6. Claims 1-22 are subject to restriction or election requirement.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on 11/25/01. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1835 C.O. 11; 453 O.G. 213.
14. Other

EXAMINER'S ACTION

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1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-20, drawn to apparatus for extracting a sample from a strip of material, classified in class 73, subclass 864.41.
- II. Claim 21, drawn to a method of extracting a sample from a material strip, classified in class 73, subclass 864.41.
- III. Claim 22, drawn to a method for removing a material sample from a material strip and testing said material, classified in class 73, subclass 159.

3. The inventions are distinct, each from the other because:

Inventions Groups 2-3 considered together and Group 1 are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially

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different process than that of group 2 such as one where a sample can be removed or ejected from the cutting die at any position and not just an ejection position. The apparatus as claimed does not require that tests be performed while the sample is held between the strips to determine physical properties of the sample as in group 3. Even if the apparatus of claim 20 of group 1 is so held the method of group 3 could be performed by a materially different apparatus such as one not requiring to use of an ejector pin located within the cutting die as required by claim 20.

4. Inventions Group 3 and Group 2 are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it does not require rotation of a cutting wheel into an ejection position to eject the sample as in group 2. The subcombination has separate utility such as use as a sample extractor for testing chemical properties of the sample or even if testing physical properties not necessarily performing tests on the sample held between strips as in group 3, etc.

5. Because these inventions are distinct for the reasons given above and the search required for Group 1 is not required for Groups 2-3, etc., restriction for examination purposes as indicated is proper.

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6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. A telephone call was made to Mr. Gregory S. Kolocousis on Jan. 17, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (703) 305-4765. The examiner can normally be reached on weekdays from 9:00 to 5:30.

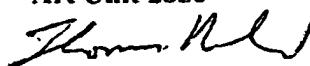
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached on (703) 305-4705.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

1/21/03

Thomas P. Noland
Primary Examiner
Art Unit 2856



Noland/ek
01/23/03